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09/855,188	05/14/2001	Raymond Jeffrey May	KCC-14,829	8199

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EXAMINER

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ART UNIT PAPER NUMBER

1771

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/855,188
Filing Date: May 14, 2001
Appellant(s): MAY ET AL.

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GROUP 1700

Melanie I. Rauch
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 19, 2005 appealing from the Office action mailed May 16, 2005.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of the Claimed Subject Matter*

The summary of invention contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the issues in the brief is correct.

(7) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO 95/34264	MELBYE et al.	21 December 1995
US 5,885,686	CEDERBLAD et al.	23 March 1999
US 6,248,097 B1	BEITZ et al.	19 June 2001
US 6,057,024	MLEZIVA et al.	02 May 2000

(9) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

- Claims 1-7, 13-15, 20-21 and 50-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over MELBYE et al. (WO 95/34264) in view of CEDERBLAD et al. (US 5,885,686) and BEITZ et al. (US 6,248,097 B1).

MELBYE et al. discloses an elastic material comprising a plurality of extruded continuous elastomeric strands, which are bonded to a facing layer. The strands may be either placed in greater quantity in certain regions and/or thicker and thinner strands may be employed, in order to produce an elastic material having different zones of elasticity [which will equate to the present tension zones]. (See page 4, line 21 – page 5, line 3). The reference further teaches that the first sheet of flexible material [the facing layer], could be a polymeric film, or a sheet of woven natural or polymeric fibers, or nonwoven natural or polymeric fibers that are bonded internally of the sheet, and also teaches that the elastomeric strands could be of thermoplastic material such as elastomeric polyester, polyurethane and polystyrene-polyisoprene-polystyrene. (Refer to page 2, lines 9-18). The reference also teaches the use of a second facing material (32). (Refer to Figure 6)

MELBYE et al. teaches the use of the elastic sheet-like composite in a disposable garment. (Refer to page 7, lines 6-10)

However, the reference does not expressly disclose that the different zones of elasticity include first filaments of a first elastomeric polymer and the second filaments of a second elastomeric polymer. MELBYE et al. also fails to teach the presently claimed barrier layer.

CEDERBLAD et al. discloses an extruded bicomponent elastomeric netting having bi-directional elasticity. The reference teaches that the elastomeric netting comprises one set of extruded strands in one direction consisting essentially of a first elastic resin component and another set of transverse extruded strands consisting essentially of a second elastic resin component. The strands compositions of both sets of strands could be the same, could be of different components or could be a blend of resins. (Refer to claims 1-8) While the CEDERBLAD et al. reference is directed to provide the material with different elastomeric properties in different directions, it is noted that the reference teachings of using different materials for the first and second strands in order to produce the different elastomeric properties is pertinent to the present invention and will provide the MELBYE et al. reference with an alternate embodiment that would provide the elastic material with different zones of elasticity by using two different elastomeric strands instead of producing this areas by increasing the quantity of strands in certain regions or using thicker and thinner strands.

With regards to claims 5 and 7, CEDERBLAD et al. further teaches the use of polyethylene as a processing aid resin in the polymer compositions. (Refer to claim 11) With regards to claim 14, MELBYE teaches that the zones of different basis weight can be next to each other, therefore, it would have been obvious to one of ordinary skill in the art to have likewise place the different elastomeric fibers in zones in which they were side-by-side and not overlapping.

CEDERBLAD et al. also fails to teach the presently claimed barrier layer.

BEITZ et al. discloses a gusset-flap member 19 and teaches that it can include a barrier layer 174 having a pair of laterally opposed, longitudinally extending, barrier layer side edges,

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and first and second major facing surfaces. The barrier layer can be substantially liquid impermeable. A fabric layer 176 is joined in facing relation with the first facing surface of the barrier layer, and the fabric layer has a leg gusset region and a containment flap region. The reference further teaches a first arrangement of a first plurality of separate, longitudinally extending elastomeric members 139 that can be attached to and sandwiched by the barrier layer 174 and the fabric layer 176. (Col. 6, lines 28-49; also refer to Figures 9-11)

Since the references are from the same field of endeavor, elastomeric filaments, the purpose disclosed by CEDERBLAD et al. and BEITZ et al. would have been recognized in the pertinent art of MELBYE et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the elastomeric material and provide it with first and second strands of different compositions with the motivation of providing the material with different elastomeric properties as disclosed by CEDERBLAD et al. (Column 1, lines 24-25). Further, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the elastomeric material and provide it with a barrier layer between the facing layers motivated by the desire of providing the laminate with protection against liquids by providing it with a liquid impermeable layer such as the one of BEITZ et al.

- Claims 8-12, 16-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over MELBYE et al., CEDERBLAD et al. and BEITZ et al. as applied above, and further in view of MLEZIVA et al. (US 6,057,024).

The prior art above differ from the claimed invention because they do not disclose the relation of the elastic tension between the low tension zone and the high tension zone, they do

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not disclose employing an elastomeric adhesive to bond the facing layer and the filaments, and do not disclose using a spunbond material or a meltblown continuous filament composite web for the facing material.

MLEZIVA et al. teaches a composite elastic material that includes an elastic fibrous web 12 and a first extensible layer 24 and a second extensible layer 28. The extensible layers may be formed by extrusion processes such as, for example, meltblowing processes, spunbonding processes or film extrusion processes. (Column 7, lines 3-44) The reference teaches that the bonding between the extensible layer and the elastic fibrous web 12 can be continuous using adhesive bonding techniques. (Column 9, lines 58-62) Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have adhesively bonded the fibers to the facing layers because MLEZIVA et al. teaches that this was an alternative method to extruding the strand onto the facing and layer and autogeneously bonding the layers and the strands. With regards to the relation of the elastic tension between the low tension zone and the high tension zone claimed on claims 8-12, since CEDERBLAD et al. teaches that it is known to use different elastomeric materials to provide different elastomeric properties in an elastomeric material, these variables are result effective variables. Therefore, it would have been obvious to have optimized the elastomeric material by providing it with first and second strands of specific polymeric materials in order to form a fabric having the desired elastic tension through the For the above reasons, it is believed that the rejections should be sustained.

(10) Response to Argument

a. With regards to Appellant's arguments of the 35 U.S.C. 103(a) rejection over MELBYE et al. in view of CEDERBLAD et al. and BEITZ et al., it is noted that the Examiner relies on the Cederblad reference to introduce the concept of using different materials to produce different elasticity properties, and not bodily incorporating the netting structure of Cederblad in Melbye. Appellants interpretation of the Examiner's combination of Melbye and Cederblad is not correct, the Examiner is not bodily incorporating the structure of Cederblad in which the first and second strands are in perpendicular directions but relying on the reference's concept of using different material to produce different elasticity properties.

With regards to Applicant's arguments on the type of extruder Melbye et al. uses to produce the elastic strands, it is noted that the claims of the present invention currently being examined are product claims which do not require the method limitations that Applicant's are arguing, therefore, such arguments are irrelevant.

With regards to arguments over the BEITZ et al. reference, it is noted that the Examiner is not bodily incorporating the composite of Beitz et al. but finds that the one of ordinary skill in the art of disposable garments would be motivated to provide a liquid impermeable barrier layer in a composite material in order to provide protection against liquids. It is noted that Figs. 9-11 of BEITZ et al. provide the barrier layer in a composite structure similar to the present invention. It is noted that BEITZ et al. relates to a laminate material used in disposable garments and that MELBYE et al. also teaches the use of their elastic composite (laminate) in disposable garments. (Page 7, lines 6-10)

It seems that Appellants are trying to argue each individual reference and all the different possible combinations that could be obtained from their teachings instead of arguing the reasoning presented by the Examiner.

b. With regards to Appellant's arguments of the 35 U.S.C. 103(a) rejection over MELBYE et al., CEDERBLAD et al., BEITZ et al. and further in view of MLEZIVA et al., it is noted that that the Examiner relies on the teaching of MLEZIVA et al. to provide the use of adhesive bonding as an alternative method to extruding strands and autogeneously bonding them into the facing layer. Appellant's arguments are focusing on the process of the primary reference of MELBYE et al., which are irrelevant to the product being claimed. It is noted herein that the combinations applied by the Examiner provide a primary reference with the main structure of the present invention and then uses specific teachings or concepts relevant to the different parts of that main structure and not bodily incorporating the secondary reference's structures into the primary reference. Appellants have failed to evidence that the combinations presented by the Examiner will destroy the main structure of the MELBYE et al. reference, since their arguments are directed to the each individual reference and all the possible combinations that could be obtained from their teachings instead of arguing the combinations and the reasoning presented by the Examiner.

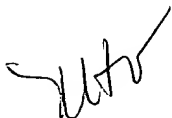
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(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Norca L. Torres Velazquez



**NORCATORRES
PRIMARY EXAMINER**

Conferees :

Terrel Morris 

Carol Chaney 